

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Mohammad Heydari
Case No. DIR2024-0003

1. The Parties

The Complainant is Philip Morris Products S.A., Switzerland, represented D.M. Kisch Inc., South Africa.

The Respondent is Mohammad Heydari, Iran (Islamic Republic of).

2. The Domain Name and Registrar

The disputed domain name <mrheets.ir> is registered with IRNIC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 13, 2024. On March 13, 2024, the Center transmitted by email to IRNIC a request for registrar verification in connection with the disputed domain name. On March 25, 2024, IRNIC transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 25, 2024, providing the registrant and contact information disclosed by IRNIC, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on March 26, 2024. Hard copies of the Complaint were received by the Center on April 3, 2024.

The Center verified that the Complaint and the amended Complaint satisfied the formal requirements of the .ir Domain Name Dispute Resolution Policy (the “Policy” or “irDRP”), the Rules for .ir Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .ir Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 4, 2024. In accordance with the Rules, paragraph 5(a), the due date for Response was April 24, 2024. On April 25, 2024, the Center notified the Respondent’s default.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on May 2, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant, Philip Morris Products S.A., a Swiss company established under the laws of Switzerland, is part of the group of companies affiliated to Philip Morris International Inc. (jointly referred to as “PMI”). PMI is one of the leading international tobacco companies, with products sold in approximately 180 countries.

In the course of transforming its business from combustible cigarettes to Reduced Risk Products (or “RRPs”, which PMI defines as products that present, are likely to present, or have the potential to present less risk of harm to smokers who switch to those products instead of continuing to smoke), PMI has developed a number of products. One of these RRP’s developed and sold by PMI is branded IQOS. IQOS is a controlled heating device into which specially designed tobacco products under the brand names HEETS and HEATSTICKS are inserted and heated to generate a nicotine-containing aerosol.

The Complainant has proven to be the owner of the IQOS and HEETS trademarks.

The Complainant is inter alia the owner of:

International Registration for HEETS (word), No. 1326410, registered on July 19, 2016;

International Registration for HEETS (device), No. 1328679, registered on July 20, 2016;

International Registration for IQOS (word), No. 1218246, registered on July 10, 2014; and

International Registration for IQOS (device), No. 1338099, registered on November 22, 2016.

The disputed domain name was registered on July 18, 2023.

The Complainant’s trademark registrations predate the registration of the disputed domain name.

According to the documents provided with the Complaint, the disputed domain names resolved (at least on March 11, 2024) to an online shop purportedly offering the Complainant’s IQOS System, including purported HEETS-branded goods, as well as competing third party products of other commercial origin.

The content of the Respondent’s website was in Persian, and all prices were indicated in Iranian currency. The target market appears to be Iran (Islamic Republic of); however, the Complainant’s IQOS system is currently not sold in Iran (Islamic Republic of).

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- a) the disputed domain name, which fully incorporates its HEETS trademark, is confusingly similar to it because the addition of the term “mr” to the trademark in the disputed domain name is not sufficient to distinguish the disputed domain name from the trademark;

- b) the Respondent has no rights or legitimate interests in respect of the disputed domain name, and
- c) the use of the Complainant's HEETS and IQOS trademarks, logo and imagery on the website at the disputed domain name shows the Respondent's awareness of its trademarks at the time of registration of the disputed domain name as well as the Respondent's intent to deceive consumers into believing that it is a website operated or authorized by the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

In order for the Complainant to obtain a transfer of the disputed domain name, paragraphs 4(a)(i) - (iii) of the Policy require that the Complainant must demonstrate to the Panel that:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.¹

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain name consists of the HEETS trademark with the addition of the term "mr". This Panel agrees with the Complainant's assertion that the addition of the term "mr" in the disputed domain name does not prevent a finding of confusing similarity between the Complainant's HEETS trademark and the disputed domain name.

The country-code Top-Level Domain ("ccTLD") is generally disregarded under the test for confusing similarity for the purposes of the Policy as it is viewed as a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.1.

Thus, the Panel finds that the Complainant's trademark, which is reproduced in its entirety within the disputed domain name, is clearly recognizable. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

¹In light of the substantive and procedural similarities between the irDRP and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel has cited decisions under the UDRP and the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), where appropriate.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in irDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Respondent appears to be impersonating the Complainant as it uses the disputed domain name to confuse Internet users presumably looking for the Complainant through redirecting them to its own website, which is displaying the Complainant’s trademarks, its signature logo and related imagery without any authorization, and for the most part purportedly offers for sale the Complainant’s products. Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

While the website linked to the disputed domain name features a footer indicating that the content on the website is only for non-commercial purposes and with reference to the source, the overall content found on the website and the nature of the disputed domain name suggests affiliation or endorsement by the Complainant.

The Panel finds the second element of the Policy has been established.

C. Registered or Used in Bad Faith

Based on the evidence put forward by the Complainant, the Panel is of the opinion that the Respondent was aware of the Complainant’s trademark registrations and rights to the HEETS mark when it registered the disputed domain name.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s trademarks due to the Respondent’s use of the disputed domain name to resolve to an online shop purportedly selling and offering the Complainant’s IQOS System, including purported HEETS-branded goods, as well as competing third party products of other commercial origin. In addition, a number of the Complainant’s official product images, without the Complainant’s authorization, are displayed on this website.

The Respondent’s use of the disputed domain name for an unauthorised website offering HEETS-branded products, and presenting copyrighted imagery of the Complainant’s products, is an inference that the Respondent knew of the Complainant’s trademark and activity.

The Panel further notes that the Complainant's IQOS system is currently not sold in Iran (Islamic Republic of), which appears to be the market to which the disputed domain name is directed.

As affirmed by the Panel in the analogous case *Philip Morris Products S.A. v. Mohammad Heydari, GreenHost*, WIPO Case No. [D2023-2862](#), apparently involving the same parties as in this proceeding, "the Respondent's website, listing Tehran, the capital of Iran as the seat of its head office falsely suggests to Internet users that the Complainant's IQOS system is legitimately available in the Iranian market. Such deliberate false activity is harmful to the Complainant and is in the view of the Panel further evidence of the Respondent's bad faith".

Finally, the fact that this same Respondent has, apparently, already been involved in a UDRP proceeding for having abusively registered another domain name, i.e. <mriqos.com>, containing a trademark of the present Complainant, shows a pattern of bad faith registration and use of domain names corresponding to third parties' registered trademarks; and that the Respondent registered the disputed domain name clearly aware of the Complainant's trademark rights and activity.

Consequently, the Panel finds that the Complainant has established the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <mrheet.ir> be transferred to the Complainant.

/Fabrizio Bedarida /

Fabrizio Bedarida

Sole Panelist

Date: May 16, 2024